

**FILED**

**JUL 26 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ILDELISA URENA RODRIGUEZ,

Defendant - Appellant.

No. 05-50518

D.C. No. CR-03-03147-TJW

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Thomas J. Whelan, District Judge, Presiding

Submitted July 24, 2006\*\*

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Ildelisa Urena Rodriguez appeals from her 70-month sentence imposed after her guilty plea conviction for conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii) and 846. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We reject the government's assertion that appellant's appeal waiver is valid and enforceable. *See United States v. Pena*, 314 F.3d 1152, 1154 n.1 (9th Cir. 2003) ("We note, moreover, that the district court did not inform Pena of his appellate rights and did not verify his intent to forfeit them during the plea colloquy, as it was required to do.").

Appellant contends that, because her prior conviction for a misdemeanor was uncounseled and she received a suspended sentence, her prior conviction should not have been counted toward her criminal history score, and, therefore, the district court should have granted a safety valve reduction. We disagree. The district court did not clearly err in finding that appellant failed to show by a preponderance of the evidence that her prior conviction was constitutionally infirm. *See United States v. Allen*, 153 F.3d 1037, 1041 (9th Cir. 1998); *United States v. Newman*, 912 F.2d 1119, 1123 (9th Cir. 1990).

**AFFIRMED.**